

REMARKS

Claims 1-19 were examined. Claims 1, 2, 5 and 10-17 are rejected. Claims 3-4, 6-9, and 18-19 are objected to as allowable if written in independent form.

Applicant amends claims 1, 3, 6, 11, 13 and 16 and asserts that no new matter is added herein. Amendments to claims 3 and 6 are to put claims 3-4 and 6-9 in independent form so as to be allowable as indicated above.

I. Claims Rejected Under 35 U.S.C § 102(b)

The Patent Office rejects claims 1, 10 and 13-14 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,561,868 Campbell (Campbell). It is axiomatic that to anticipate a claim every limitation of that claim must be disclosed in a single reference.

Applicant respectfully disagrees with the rejection above for at least the reason that Campbell does not disclose a first and second end members coupled between the pair of longitudinal members, as required by amended claim 1.

Campbell teaches track element 180 having angle bracket 186 and rubber gasket 196 secured to endwell 184 by an appropriate glue or adhesive (see **Figure 7** and column 8 lines 20-25). However, none of the structures mentioned above is coupled between the track elements of Campbell.

Consequently, the Patent Office has not identified and Applicant is unable to find any disclosure in Campbell of the above-noted limitation of amending claim 1.

Applicant also addresses Herman (U.S. Patent 5,465,437 issued to Herman, and cited in the Section 103 rejection below) regarding the above limitation of claim 1. Herman teaches opposed side sections 50' and 54' of frame 40' with telescoping legs 50'a, 50'b, and 54'a, 54'b arranged to telescope with opposed tubular side sections 52' and 56' (see **Figure 1** and **2-4**; and column 4 lines 13-20). However, sections 50' and 54', which do not telescope, are the ends of the longitudinal sections while telescoping structure 52' and 56' noted above correspond to the longitudinal members each defining a wheel track (see **Figure 1** and **2**). Thus, the telescoping structure of Herman is not between the longitudinal members, but instead is the longitudinal members. Moreover, the cited references do not enable, motivate or teach combining the wheel tracks of Campbell with the telescoping structure of Herman. Hence, neither Herman, Campbell, nor the combination discloses end sections coupled between longitudinal members as

required above by claim 1 (or telescoping end sections as required by dependent claims 5 or 15).

Moreover, neither Mason nor Brinkman cure the failure of the references cited above to disclose the limitations of amended claim 1 noted above.

Hence, for at least the reason that the cited references do not disclose the above-noted limitations of claim 1, Applicant respectfully requests the Patent Office withdraw the rejection above.

Applicant also respectfully disagrees and submits that independent claim 13 is patentable over the cited references for at least the reason the references do not disclose a first and second end member of each longitudinal member being pressure fit to vertical surfaces of a bath enclosure and coupled between a pair of longitudinal members, as required by amended claim 13. The arguments above for claim 1 apply here as well. Hence, for at least the reasons noted above, Applicants respectfully request the Patent Office withdraw the rejection of claim 13. In addition, the cited references do not disclose end members pressure fit to a vertical surface of a bath enclosure. For instance, Campbell teaches rubber gasket 196 secured to endwell 184 by an appropriate glue or adhesive, as noted above. However, Campbell does not disclose the above-noted limitation of claim 13. Hence for this additional reason, Applicant respectfully requests the Patent Office withdraw the rejection above of claim 13.

Any dependent claims not mentioned above are submitted as not being anticipated or obvious for at least the same reasons given above in support of their base claims.

II. Claims Rejected Under 35 U.S.C. § 112

The Patent Office rejects claim 11 under 35 U.S.C. § 112, second paragraph, as being indefinite because “each armrest” of line 1 of claim 11 has no antecedent basis. Applicant amends claim 11 to depend from claim 9 and submits claim 11 is now proper. Hence, Applicant respectfully requests the Patent Office withdraw the rejection above.

III. Claims Rejected Under 35 U.S.C. § 103

The Patent Office rejects claims 5-12 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Campbell, as applied supra, in view of U.S. Patent 5,465,437 to Herman (Herman). To render a claim obvious, all limitations of that claim must be taught or suggested by at least one properly combined reference.

Applicant respectfully disagrees with the rejection above and submits claims 5, 12 and 15 allowable as they depend from allowable base claims 1 and 13, as noted above. Moreover, Applicant asserts that dependent claims 5 and 15 are also allowable for the additional reason noted above for claim 1, with respect to the references not teaching end members with telescoping structure. Hence, for at least these reasons, Applicant respectfully requests the Patent Office withdraw the rejection above of claims 5, 12 and 15.

The Patent Office rejects claims 16-17 under 35 U.S.C. § 103(a) as being unpatentable over Campbell, as applied supra.

Applicant respectfully disagrees and submits that independent claim 16 is patentable over the cited references for at least the reason that the references do not teach or suggest first and second end members coupled between a pair of longitudinal members, as required by amended claim 16. An argument analogous to the one above with respect to claim 1 applies here as well. Hence, for at least this first reason, Applicant respectfully requests the Patent Office withdraw the rejection above of claim 16.

Any dependent claims not mentioned above are submitted as not being anticipated or obvious for at least these same reasons given above in support of their base claims.

Moreover, for claims 16-17, Applicant traverses that claim 16's ends to be disposed on an upper service of a bath enclosure and having sufficient structural stability to support a 200 pound load in the seat; and claim 17's wherein less than 15% of the longitudinal members are disposed on the upper surface of a bath enclosure, would have constituted an obvious expedient of choice and respectfully requests the Patent Office cite a reference in support of that position in accordance with MPEP § 2144.03. For at least this additional reason, Applicants respectfully request the Patent Office withdraw the rejection of claims 16 and 17 above.

IV. Allowable Claims

Applicant notes with appreciation that the Patent Office has found claims 3-4, 6-9 and 18-19 as objected to but allowable if rewritten in independent form. Applicant

amends claims 3-4 and 6-9, and 11 to be allowable as they are rewritten in independent form.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending (1) are in proper form, (2) are neither obvious nor anticipated by the relied upon art of record, and (3) are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Patent Office believes that a telephone conference would be useful in moving the application forward to allowance, the Patent Office is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

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By: _____

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I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Erin Flynn
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November 29, 2005